



United States
Department of
Agriculture

Forest
Service

Pacific
Northwest
Region

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File Code: 1570

Date: April 25, 2013

Mr. Tom Partin
American Forest Resource Council
5100 S.W. Macadam Avenue
Suite 350
Portland, OR 97239

**CERTIFIED MAIL – RETURN
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NUMBER: 7011 1150 0000 9640 4788**

Dear Mr. Partin:

This constitutes my decision, pursuant to 36 CFR 215.18(b)(1), on your appeal (#13-06-00-0013-215) of Forest Supervisor John Allen's Record of Decision for the Rim-Paunina Project Environmental Impact Statement (EIS) on the Crescent Ranger District, Deschutes National Forest.

Project Overview

On January 23rd, 2013, John Allen, Forest Supervisor for the Deschutes National Forest, signed a record of decision (ROD) for the Rim-Paunina Project FEIS. His decision was to implement Alternative E in its entirety. It included:

- 11,236 acres of commercial harvest.
 - 5,244 acres of density reduction thinning (HTM).
 - 4,028 acres of improvement cutting (HIM).
 - 1,921 acres of alternative mistletoe treatment.
 - 43 acres of aspen restoration treatment.
- 13,491 acres of prescribed fire.
- Two portions of the Deschutes National Forest Land and Resource Management Plan be amended.
 - Amending Interim Wildlife Standard 6(d) to allow timber harvest activities to occur within Late and Old Structure (LOS) stages below HRV.
 - Amending Standard and Guideline M9-90 to allow low intensity prescribed fire in blocks exceeding five acres within foreground scenic views.

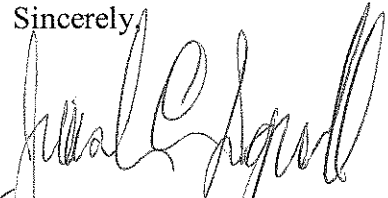
My review of this appeal has been conducted in accordance with 36 CFR 215.18, *Formal review and disposition procedures*. I have reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer. A copy of her recommendation is enclosed. The Appeal Reviewing Officer focused her review on the appeal record and the issues that were raised in the appeal.



Appeal Decision

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision for the Rim-Paunina Project and deny your requested relief. This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)]. A copy of this letter will be posted on the national appeals web page at <http://www.fs.fed.us/appeals>.

Sincerely,


FES KENT P. CONNAUGHTON
Regional Forester

Enclosure

cc: Kathleen Klein, Susan Skakel, Debbie Anderson, Adam A Felts, Timothy Foley, Holly Jewkes



File 1570
Code:
Route
To:

Date: April 23, 2013

Subject: Appeal Recommendation, Rim Paunina Project

To: Kent Connaughton, Regional Forester, R-6

On January 23rd, 2013, John Allen, Forest Supervisor for the Deschutes National Forest, signed a record of decision (ROD) for the Rim-Paunina Project FEIS. His decision was to implement Alternative E in its entirety. It included:

- 11,236 acres of commercial harvest
 - 5,244 acres of density reduction thinning (HTM)
 - 4,028 acres of improvement cutting (HIM)
 - 1,921 acres of alternative mistletoe treatment
 - 43 acres of aspen restoration treatment
- 13,491 acres of prescribed fire
- Two portions of the Deschutes National Forest Land and Resource Management Plan be amended
 - Amending Interim Wildlife Standard 6(d) to allow timber harvest activities to occur within Late and Old Structure (LOS) stages below HRV
 - Amending Standard and Guideline M9-90 to allow low intensity prescribed fire in blocks exceeding five acres within foreground scenic views

Pursuant to 36 CFR 215.17, informal resolution was pursued for all Rim-Paunina Project appeals. Dick Artley (#13-06-00-0011-215) requested the Record of Decision to be withdrawn and the Environmental Impact Statement be rewritten. Charles Burley (#13-06-00-0012-215), representing Interfor, requested that Alternative E be modified to include the harvest and utilization of severely mistletoe-infected trees > 21 inches diameter. Tom Partin (#13-06-00-0013-215), representing American Forest Resource Council, requested that Alternative E be modified to identify the preservation of the forest products infrastructure as a key issue and to increase commercial harvesting, utilizing trees severely infected with dwarf mistletoe that are ≥ 21 inches in diameter. Karen Coulter (#13-06-00-0014-215), representing League of Wilderness Defenders – Blue Mountain Biodiversity Project, requested that the Record of Decision and the Final Environmental Impact Statement be withdrawn. In addition, the Rim-Paunina Project should reflect the objectives of the Blue Mountain Biodiversity Project and be revised to ensure consistency with law, regulation, and Forest Service policy. Doug Heiken (#13-06-00-0015-215), representing Oregon Wild, requested the Record of Decision be withdrawn and that the Forest Service adopt a new decision that conforms with their recommendation.



The record indicates that informal resolution was reached with Oregon Wild and Blue Mountain Biodiversity Project (League of Wilderness Defenders). Therefore, their appeals were formally withdrawn.

Review and Findings

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, policies, and orders. The appeal record, including all of the appellants' issues, has been thoroughly reviewed. Having reviewed the FEIS, ROD, and the project record as required by 36 CFR 215.19(b), I conclude the following:

1. The decision clearly describes the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decision.
2. The selected alternative will accomplish the purpose and need for which this project was established. The purpose and need stated in the FEIS reflects consistency with the Deschutes National Forest Land and Resource Management Plan, as amended.
3. The decision is consistent with policy, direction, and supporting evidence. The record contains documentation regarding resource conditions and the Responsible Official's decision document is based on the record and reflects a reasonable conclusion.
4. The record reflects that the Responsible Official provided adequate opportunity for public participation during the analysis and decision making process. The Responsible Officials' efforts allowed interested publics the opportunity to comment and be involved in the proposal.

After considering the claims made by the appellants and reviewing the record, I found that the Responsible Official conducted a proper and public NEPA process that resulted in a decision that is consistent with the Deschutes National Forest LRMP, as amended. I found no violations of law, regulations, or Forest Service policy.

Recommendation

After reviewing the appeal record, I recommend affirming the decision. I believe that the project documentation adequately supports the Forest Supervisor's decision with regards to all appeal points raised by the appellants.

Enclosed with this memo are my responses to each appeal issue.



KATHLEEN KLEIN
Forest Supervisor

cc: Debbie Anderson, Lillian M Compo, Adam A Felts

**Rim-Paunina Project
Appeal Statements and Responses
Deschutes National Forest
April 2013**

Appellants

Dick Artley (DA)

Interfor (IN)

American Forest Resource Council (AFRC)

Appeal Number

13-06-00-0011-215

13-06-00-0012-215

13-06-00-0013-215

Purpose and Need

Appellant Statement #1: Appellants believe that “Alternative E, the selected alternative, does not meet the purpose and need. Specifically, leaving severely mistletoe-infected trees over 21 inches in diameter is not based on science, is not warranted given the number of snags available on the immediate landscape, and reduces the projects ability ‘to contribute to the local and regional economies by providing timber and other wood fiber products now and in the future.’” IN at 2 and AFRC at 2 and 3.

Response: I find that the Responsible Official has connected the Rim-Paunina Project’s purpose and need and the selection of Alternative E with a rational explanation. In addition, the Responsible Official based his decision on the best available science, local qualitative analysis and snag analysis.

The regulation at 40 CFR 1502.13 states that, “The statement [or EIS] shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” The regulation at 40 CFR 1502.24 states that, “[a]gencies shall insure the professional integrity, including scientific integrity, of the discussion and analysis in the environmental impact statements.”

The purpose and need for the Rim-Paunina Project is listed within the FEIS and the ROD. FEIS at 27 to 28 and ROD at 10 to 12. An explanation of Alternative E, the selected alternative, is outlined in the FEIS at 62 to 70. The FEIS at 62 explains that Alternative E would respond to key issues #1 (maintaining a better balance of Management Indicator Species habitat), #3 (balancing short and long-term black-backed woodpecker nesting habitat), and #4 (returning frequent fire regimes to the landscape). Therefore, Alternative E responds to the key issues of the project and in turn responds to the purpose and need of the Rim-Paunina Project.

The FEIS points out how each alternative, including Alternative E, meets the purpose and need in Chapter 2. FEIS at 89. Specifically, Alternative E supplies 24.1 MMBF to the local and regional economies. This is the second highest amount out of the five considered-in-detail alternatives, 1.2 MMBF difference from the highest alternative.

The Responsible Official tied his decision for selecting Alternative E, concerning not allowing trees ≥ 21 inches to be harvested, to the Alternative Mistletoe Treatment projections and the snag analysis in the ROD. ROD at 24. The FEIS qualitatively analyzed the effectiveness of each alternative at treating mistletoe. FEIS at 362. The Responsible Official stated that Alternative E was found to be most effective at treating mistletoe. The FEIS at 110 pointed out that the project area is deficient in high density snags in the ponderosa pine/Douglas-fir habitat type for the ≥ 10 inches and ≥ 20 inches diameter classes. The Responsible Official also noted that Alternative E best addressed leaving snags on the landscape for the ponderosa pine/Douglas-fir habitat type in order to reduce this deficiency. Thus, the Responsible Official found that the selected alternative met the purpose and need to provide wood products to the local and regional economies and that providing for snags in certain habitat type was based on the best available science.

Issues

Appellant Statement #2: Appellant states that economics and preservation of the industry infrastructure are not identified as “key” issues even though they specifically articulated how critical this issue is in both the scoping comments and the comments on the DEIS. AFRC at 2 and 3.

Response: I find that the FEIS appropriately defined the purpose and need for action.

The regulation at 40 CFR 1502.13 states that, “The statement [or EIS] shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. “

Of the two gaps between existing and desired condition that were identified as the purpose and need the need to contribute to the local and regional economies by providing timber and other wood fiber products now and into the future addressed the appellant’s concerns. FEIS at 27 and 28. Because the need for action included providing wood products, the Responsible Official determined that there was no ‘issue’ because all alternatives that were developed must meet the need for action, including the need to provide wood products. The FEIS also provided an analysis of the economic viability of the alternatives, taking into account the current and anticipated condition of the wood products industry in the local and regional areas. FEIS at 475-481.

Best Available Science

Appellant Statement #3: Appellant asserts the Rim-Paunina Project Environmental Impact Statement (EIS) did not use best available science since references used in the document were not peer reviewed, violating 40 CFR 1500.1(b), 40 CFR 1500.2(d), and 40 CFR 1506.6(a). DA at 1, 2, and 8.

Response: I find that the Responsible Official utilized best available, peer reviewed, and site

specific science.

The regulation at 40 CFR 1502.24 states that agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

The FEIS provided an extensive list of referenced material that was used in developing the alternatives and assessing the environmental effects. FEIS at 529-554. The Responsible Official stated that his decision to approve the project was based “on a review of the record that shows a thorough evaluation of relevant scientific information, a consideration of responsible opposing views, and the acknowledgment of incomplete or unavailable information (40 CFR 1502.22), scientific uncertainty, and risk.” ROD at 6-7, 8, 11, 16, 20-21.

Methodologies used for analyses were identified for resources in the FEIS, e.g. FEIS at 92-93 (cumulative effects method); FEIS at 97-100 (wildlife); FEIS at 105-108 (snags and down wood); and FEIS Appendix G at 340-342 (forested vegetation); FEIS at 400 (soils), FEIS at 419 (botany), FEIS at 435 (fisheries and aquatic resources), and FEIS at 487-489 (potential wilderness area).

The FEIS at Appendix E – Response to Comments at 69-71, 77, 79, 81, 87-89, 99-101, 105, 108, 111-112, 133-134, 141, 147, 151, 152, 155, 162 responded to and pointed out the Responsible Official’s consideration of opposing science submitted through the notice and comment process. The FEIS at Appendix F contained a thorough analysis of scientific references submitted by appellant and others involved in the process.

References used in analyses were included throughout resource sections of the FEIS at 96-512 and FEIS at 529-554 provided the complete list of references.

Opposing Science

Appellant Statement #4: Appellant states that the Responsible Official “entirely failed to consider an important aspect of the problem, offered an explanation that ran counter to the evidence before the agency, and did not articulate a rational connection between the facts found and the conclusions reached.” “None of these documents say anything about the adverse effects on the forest’s natural resources caused by timber harvest and road construction.” This violates the Administrative Procedures Act (APA). DA at 9 and 10.

Response: I find the Responsible Official followed the Administrative Procedures Act by considering the best available science, including opposing science presented during public involvement. The FEIS presented extensive analysis of Alternative E’s effects (the selected alternative), including disclosure of adverse impacts.

The regulation at 40 CFR 1502.24 states that the agencies shall insure the professional integrity, including scientific integrity, of the discussions and analysis in environmental impact

statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

The FEIS at 92-512 disclosed all potential effects, both beneficial and adverse, that the Rim-Paunina Project might have on the natural resources. The Responsible Official recognized unavoidable adverse effects to Wildlife, Soils, Invasive Species Plants, and Recreation in the FEIS at 520-521.

The Responsible Official specifically disclosed the adverse effect of road construction and logging in the FEIS at 521 stating, "The development and use of temporary roads and logging facilities is considered an irretrievable loss of soil productivity until their functions have been served and disturbed sites are returned back to a productive capacity."

With regards to decision making, the regulation at 40 CFR 1505.2(b) states that, "an agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision."

As documented in the ROD at 22, the Responsible Official didn't select the no action alternative because it didn't meet either portion of the purpose and need. Within each resource section of Chapter 3, the FEIS includes the effects analysis that provided the basis for his decision rationale. FEIS at 92-522.